

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'H' BENCH,  
NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER, AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 1192/DEL/2023 [A.Y 2017-18]

M/s Tocsin Builders Pvt. Ltd  
306-308, 3<sup>rd</sup> Floor, Square One  
C-2, District Centre, Saket, New Delhi

Vs.

The I.T.O  
Ward - 25(3)  
New Delhi

PAN: AACCT 4813 B

(Applicant)

(Respondent)

Assessee By : Shri Salil Kapoor, Adv  
Shri Shivam Yadav, Adv

Department By : Shri Amit Katoch, Sr. DR

**Date of Hearing : 03.07.2024**

**Date of Pronouncement : 30.07.2024**

**ORDER**

**PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the NFAC, Delhi dated 01.03.2023 pertaining to A.Y 2017-18.

2. The grievances of the assessee read as under:

"1. That, in view of the facts and circumstances of the case and in law, the intimation order dated 29.03.2019 passed under Section 143(1) of the Income Tax Act, 1961 ('herein referred as Act') by the Central Processing Centre ('CPC') is illegal, bad in law and without jurisdiction.

2. That, in view of the facts and circumstances of the case and in law, CPC has passed the intimation order dated 29.03.2019 in violation to the provisions enumerated under Section 143(1)(a) of the Act, i.e., adjustment is made without giving an opportunity to the Appellant which is in gross violation to principles of natural justice.

3. That, in view of the facts and circumstances of the case and in law, the CPC has erred in disallowing the tax credit amounting to Rs. 39,30,2061- despite the fact that TDS has been duly deducted and deposited with the government and the same is reflected in Form 26AS also. The CPC has erred in not appreciating that the Appellant is entitled to the said TDS credit.

4. That, in view of the facts and circumstances of the case and in law, the CPC has erred in disallowing the tax credit amounting to Rs. 39,30,2061- when the corresponding amount on which such tax is deducted is also offered to tax.

5. That, in view of the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeal) ('CIT(A)') has erred in remanding the matter to the file of the CPC/AO. The

**CIT(A), in view of the details filed by the Appellant and submissions/material placed on record, ought to have allowed the TDS credit.**

**6. That, the explanations given, evidence produced and material placed and made available on record have not been properly considered and judicially interpreted and the same do not justify the disallowance of TDS credit.**

**7. The Appellant craves leave to add, alter, modify or delete one or more grounds of appeal before or at the time of hearing.**

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. Brief facts of the case are that the assessee is a private limited company and is engaged in the business of real estate. The assessee filed its return of income on 26.10.2017 for A.Y 2017-18 declaring loss of Rs. 11,808/- while claiming a refund amounting to Rs.39,30,206/-. The return was processed by CPC and intimation u/s 143(1) of the Income-tax Act, 1961 [the Act, for short] was issued on 29.03.2019. The CPC while processing the return of income disallowed the entire TDS credit amounting to Rs. 39,30,206/- and rejected the refund as claimed by the assessee.

5. Being aggrieved, the assessee went in appeal before the Id. CIT(A).

6. After considering the facts and submissions, the Id. CIT(A) set aside the issue to the file of the Assessing Officer to examine the issue and verify the status of TDS as reflected in Form 26AS and also verify whether the corresponding income has been offered to tax by the assessee in A.Y 2017-18 and grant credit of corresponding TDS of Rs. 39,30,206/-.

7. Aggrieved the assessee is before the ITAT.

8. The say of the Id. counsel for the assessee that the assessee has entered into a collaboration agreement with Emaar MGF Land Limited to develop an integrated township on the land owned by the assessee. The assessee entered into an agreement with Gombi Buildwell Pvt Ltd from whom it received Rs 11.58 crore for exchange of land. It also got an amount of Rs 27.72 crore from M3M India Pvt Ltd against termination of collaboration agreement. The total amount of Rs 39.30 crore was transferred to Emaar MGF Land Limited which is ultimate holding company of the assessee. It is submitted that the entire income has been offered to tax by sister concern. However, as land

was owned by the assessee, TDS has come in the hands of the assessee which has been claimed. The Id. counsel for the assessee argued that declaration by the sister concern has been given before the Id. CIT(A) that no claim for TDS has been made by the sister concern. It is the say of the AR that the CPC has disallowed the claim u/s 143(1) on the ground that corresponding income for which TDS is being claimed has not been offered for tax in the current year. The Id. counsel for the assessee placed reliance on the following decisions:

1. Lamba Techno Flooring Solutions P. Ltd 131 Taxmann.com 172 Hon'ble High Court of Delhi
2. Haft Probuild Pvt Ltd ITA No. 891/DEL/2019 ITAT Delhi
3. CIT Vs. Relcom Hon'ble High Court of Delhi ITA No. 26 of 2015
4. AWP Assistance [1] Pvt Ltd ITA No 5128/DEL/2018 ITAT Delhi
5. Ratan Lal Bhiari Lal ITA No. 100 Taxmann.com 70 ITAT Delhi

9. Per contra, the Id DR has relied on the orders of CIT(A) and stated that the matter has been set aside to AO to allow credit after verification of the facts.

10. We have heard the rival submissions and have perused the relevant material on record. In the instant case we find that the assessee has claimed a TDS credit of Rs. 39,30,206/ in its Form 26AS and the corresponding income has been declared by the sister concern. The

issue is whether under section 199 of the IT Act, for claiming credit of any TDS deducted and deposited to the government, such credit should match/relate to the assessee's corresponding income which is assessable in the year when the TDS credit is claimed. In the instant case the credit for TDS is being claimed by the assessee and the corresponding income is being offered by its sister concern. Whether in such a situation credit for TDS can be extended to the person claiming the TDS.

11. We find that the ld. counsel for the assessee has relied upon catena of decisions including the decision of the Hon'ble High Court of Delhi in the case CIT Vs. Relcom in ITA No. 26 of 2015 to justify its claim. At Para 6 of its order, the Hon'ble High Court [supra] has decided the issue in favour of the assessee and against the Revenue by holding as under:

**"6. Having heard the submissions made on behalf of the revenue and after a perusal the orders passed by the CIT(A) and the ITAT, we are of opinion that the said orders do not call for any interference and were warranted and justified in the facts and circumstances of the case. Before we proceed to elaborate on our reasons for the same, a perusal of Section 199 of the Act is necessary. Section 199 reads as follows:**

"199. Credit for tax deducted. (1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.

(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.

(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given." 7. The revenue relies on the phrase "shall be treated as a payment of tax on behalf of the person from whose income the deduction was made" to contend that the assessee's TDS claim cannot be based on the receipts of M/s REPL. However, the assessee fairly admitted throughout the proceedings for its TDS claim of ` 1,20,73,097/- that the benefit of such claim has not been availed by M/s. REPL. Therefore, the revenue, having assessed M/s REPL's income in respect to such TDS claim cannot now deny

the assessee's claim on the mere technical ground that the income in respect of the said TDS claim was not that of the assessee, given that M/s Relcom (the assessee) and M/s REPL are sister concerns and M/s REPL has not raised any objection with regard to the assessee's TDS claim of ` 1,20,73,097/-. 8. This Court's reasoning is supported by a ruling of the Division Bench of the Andhra Pradesh High Court in CIT v. Bhooratnam, (2013) 357 ITR 196 (AP), where the Court noted as follows: [www.taxguru.in](http://www.taxguru.in) ITA 26/2015 Page 6 "In our view, the CIT (Appeals) and the Tribunal have rightly held that the assessee is entitled to the credit of the TDS mentioned in the TDS certificates issued by the contractor, whether the said certificate is issued in the name of the Joint Venture or in the name of a Director of the assessee company. They have considered the terms of the agreement dated 12-03- 2003 among the parties to the joint venture and held that credit for TDS certificates cannot be denied to the assessee while assessing the contract receipts mentioned in the said certificates as income of the assessee. The income shown in the TDS certificates has either to be taxed in the hands of the joint venture or in the hands of the individual co-joint venturer. As the joint venture has not filed return of income and claimed credit for TDS certificates and the TDS certificates have not been doubted, credit has to be granted to the TDS mentioned therein for the assessee. XXX XXX XXX The Revenue cannot be allowed to retain tax deducted at source without credit being available to anybody. If credit of tax is not allowed to the assessee, and the joint venture has not filed a return of income, then credit of the TDS cannot be taken by anybody. This is not the spirit and

intention of law.”(emphasis supplied) 9. At this stage, it is also relevant to note the provisions of Rule 37BA of the Income Tax Rules, 1962, which envisions grant of TDS credit to entities other than the deductee (herein, M/s REPL). We must clarify that we are not oblivious of the fact that Rule 37BA is not directly applicable in the facts of this case. The reliance placed on Rule 37BA is merely to demonstrate that in not all circumstances is TDS credit given to the deductee. 10. This Court relies upon the well-settled dictum that procedure is the handmaid of justice, and it cannot be used to hamper the cause of justice [www.taxguru.in](http://www.taxguru.in) ITA 26/2015 Page 7 [Sardar Amarjit Singh Kalra v. Pramod Gupta, (2003) 3 SCC 272]. Therefore, the revenue's contention that the assessee, instead of claiming the entire TDS amount, ought to have sought a correction of the vendor's mistake, would unnecessarily prolong the entire process of seeking refund based on TDS credit. 11. In light of the aforesaid reasons, the question of law framed is answered against the revenue and the appeal is accordingly dismissed.”

11. Considering the facts and circumstances of the present case in hand, we find that the decision of the Hon'ble Delhi High Court [supra] is squarely applicable in the instant case. Respectfully following the decision of the Hon'ble High Court in the case of CIT Vs. Relcom, we therefore hold that the assessee is entitled to the credit of the TDS mentioned in Form 26AS issued to it. We accordingly direct the Assessing Officer to allow credit of TDS after verification of the

assessee's claim that the corresponding income has been offered to tax by the sister concern of the assessee in A.Y 2017-18 and the said sister concern has not claimed the corresponding TDS in its own hand.

12. In the result, the appeal of the assessee in ITA No. 1192/DEL/2023 is allowed.

The order is pronounced in the open court on 30.07.2024.

Sd/-

**[CHALLA NAGENDRA PRASAD]**  
**JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]**  
**ACCOUNTANT MEMBER**

Dated: 30<sup>th</sup> JULY, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	